

Fair Political Practices Commission
MEMORANDUM

TO: Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

FROM: Carla Wardlow, Chief
Technical Assistance Division
Luisa Menchaca, General Counsel

DATE: November 17, 2003

SUBJECT: Adoption of Amendments to Regulation 18427.1—Notification
to Contributors of \$5,000 or More

Attached for your consideration are proposed amendments to regulation 18427.1—Notification to Contributors of \$5,000 or More. (See Appendix A.)

Background

The Act requires committees to file periodic reports disclosing, among other things, contributions made to support or oppose state and local candidates and ballot measures. The term “committee” is defined in section 82013 as any person or combination of persons who directly or indirectly does any of the following:

- (a) Receives contributions totaling \$1,000 or more in a calendar year (“recipient committees”).
- (b) Makes independent expenditures totaling \$1,000 or more in a calendar year (“independent expenditure committees”).
- (c) Makes contributions totaling \$10,000 or more during a calendar year (“major donor committees”).

Independent expenditure and major donor committees do not receive contributions from others and are usually business entities or individuals using personal funds.¹

Major donor committees file reports for each year in which contributions totaling \$10,000 or more are made, then terminate automatically at the end of that year. If no contributions, or less than \$10,000 in contributions, are made in a calendar year, no reporting is required. Many individuals and entities qualify as major donors on the basis of a single contribution made to a candidate or ballot measure committee and are unaware that they have become a “committee” with campaign reporting obligations under the Act.

¹ Some recipient committees under section 82013(a) receive contributions only for the purpose of making independent expenditures and refer to themselves as independent expenditure committees.

To increase compliance with the major donor reporting provisions, section 84105 was added to the Act in 1985 and requires candidates and recipient committees to notify large contributors of the Act's reporting requirements. Section 84105 provides:

“A candidate or committee which receives contributions of five thousand dollars (\$5,000) or more from any person shall inform the contributor that he or she may be required to file campaign reports. The notification shall occur within two weeks of receipt of the contributions but need not be sent to any contributor who has an identification number assigned by the Secretary of State issued pursuant to Section 84101.”

In 1986, the Commission adopted regulation 18427.1. The regulation specifies the content of the notice required by section 84105 and requires that candidates and committees keep records of notices they send.

Proposed Amendments

By letter dated November 22, 2002, Vigo G. Nielsen, Jr., of the law firm Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, has requested that the Commission amend regulation 18427.1 to clarify the language in subdivision (b) relating to late contribution reports. (See Appendix B.) Mr. Nielsen states that the current notice language causes some major donor committees to overlook the late contribution reporting requirement.

A “late contribution” is a contribution totaling \$1,000 or more made to or received by a candidate or a committee primarily formed to support or oppose a candidate or a ballot measure during the 16-day period following the closing date of the last campaign statement required to be filed in connection with the candidate's or ballot measure's election through the day before the election. (Section 82036.) During this period, reports of late contributions must be filed within 24 hours. (Section 84203.) Major donors, like all other committees, must file late contribution reports.

Regulation 18427.1 contains specific wording for committees to use when notifying major donors of their filing obligations, including a statement that late contribution reports “may be required” if the major donor makes contributions totaling \$1,000 or more to a single candidate or committee during the 16 days before an election. On Line 14 of the draft amendment, staff proposes replacing the words “may be required” with “are required” to clearly state that major donor committees are required to file late contribution reports. Additional language has been added on Lines 15 through 18 to explain in more detail what a late contribution is, consistent with the definition of “late contribution” as provided in section 82036. The Commission's toll-free advice number also has been added.

Staff recommends that the Commission adopt the proposed amendments to regulation 18427.1.

Attachments:

Appendix A—Proposed Amendments to Regulation 18427.1
Appendix B—Letter from Vigo G. Nielsen, Jr.